

Exhibit 18

San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

September 12, 2017

Christopher J. Carr
Baker Botts L.L.P.
101 California Street, Suite 3600
San Francisco, CA 94111

SUBJECT: Public Records Act Request Re: Westpoint Harbor

Dear Mr. Carr:

This is an initial, partial response to your letter dated September 7, 2017, alleging that the documents BCDC has made available to and copied for your office concerning Westpoint Harbor do not comply with the California Public Records Act ("PRA") "because BCDC has not provided specific public records that are relevant; and (2) BCDC has not presented valid exemption as a basis for withholding other public records."

At the outset, I respectfully disagree with your claim that BCDC has failed to comply with its obligations under the PRA. As you know, we have: (1) made available to you for review and copying the complete hard-copy permitting and enforcement files for Westpoint Harbor; (2) made for you an electronic copy of BCDC's electronic permit file for Westpoint Harbor; and (3) copied over 500 pages of emails. In addition, we have endeavored to provide documents responsive to your PRA request in a timely manner and via your preferred delivery method (electronically, by dropbox).

This letter responds to the 19 specific documents discussed on pages 1-4 of your September 7th letter that you contend BCDC has failed to provide. With respect to these documents, I would note that most if not all of your questions or objections could have been promptly and informally resolved with a phone call or email. For example, you complain that attachments to certain email have not been provided. However, in my August 16th email to you, which provided the link to the dropbox containing BCDC's electronic files and emails, I explained why we had not provided email attachments and added that "if you would like the attachment or attachments to any emails, or to confirm what the attachment or attachments are to a particular email, please let Greg know, and we will get you copies of any attachments on request." Similarly, in some cases it appears that a page or a document was inadvertently not copied and that there are inadvertent errors in our index of administrative record documents. Such errors do not reflect a failure by BCDC staff to comply with the PRA, and we welcome this opportunity to correct the errors and provide responsive documents as requested.

The following paragraphs address documents 1- 19 on pages 1-4 of your letter:

1. AR Document 14. The redacted portion of this email chain is not privileged. We will provide an unredacted copy of this document to you and will also substitute the unredacted copy for the redacted copy in the administrative record documents.
2. AR Document 19. Thank you for identifying this error in the index. We will provide a copy of Charles Jany's May 6, 2011 email and attachment to you and will substitute the correct document in the administrative record documents.
3. AR Document 30. The "8/7/06 DRB Planting and Furnishing Plan" referenced in AR Document 30 is not a part of the October 11, 2011 email and is not referenced as an attachment. The plans prepared by Mr. Sanders' architect and/or consultant for the August 7, 2006 Design Review Board (DRB) meeting are included in the permit file materials that were made available for your review and copying.
4. AR Documents 53 and 54. AR Document 53 is the 11/29/12 email from Silva Robertson that appears on the bottom of page 1 of both AR Documents 53 and 54. AR Document 54 is the 12/22/12 email from Ellen Miramontes with comments (the 8-page pdf), and was mistakenly listed as AR Document 53. We will revise the index to show only the 11/29/12 Roberston email as AR Document 53, and will rename AR Document 53 as AR Document 54. With respect to the Roberston email, we did not include a clean copy of the revised signage plan as part of the administrative record document because the email is cited solely to document the date the revised signage plan was submitted. However, a copy of the revised signage plan with Ellen Miramontes' comments appears as page 8 of former AR Document 53 (now AR Document 54) (Sheet I-2.5 Public Access Signage Plan). A clean copy of the revised signage plan was included in the permit file materials that were made available for your review and copying.
5. AR Document 79. AR Document 79 is an April 10, 2017 memo from your client referencing a "Will Travis's 7/28/06 letter to the Commission." Your client did not provide a copy of the letter he references and, therefore, any such letter is not part of AR Document 79. Today I reviewed the file and found no letter dated July 28, 2006 from Mr. Travis to the Commission. However, I did find – in the permit files made available to you for review and copying – a memorandum from Mr. Travis to the DRB dated July 28, 2006. Interpreting your September 7th letter as a request for this memorandum, we will provide a copy to you.
6. AR Document 60. Due to copying or scanning error, page 2 of the referenced letter was inadvertently omitted. We will provide you with a copy of the entire letter and substitute the entire letter in the administrative record documents.

7. We did not consider the DRB proceedings concerning Westpoint Harbor to be responsive to your PRA request for documents that relate to the alleged violations or the facts asserted in the Violation Report/Complaint. Nevertheless, the permit files made available to you for review and copying include the minutes of the DRB and Commission meetings concerning Westpoint Harbor, and the administrative record documents also include the minutes of the Commission's August 7, 2003 meeting at which it considered Westpoint Harbor. Audio recordings of Commission and DRB meetings, if any, are not kept in the permit files because the Commission and DRB consider multiple matters at any one meeting. Instead, meeting minutes are posted on BCDC's website. In recent years, we have also posted audio recordings of Commission meetings. However, the archives of past meetings of the Commission available on our website do not go back to 2003, the last time this matter was considered by the Commission, and the archives of the past meetings of the DRB available on our website do not go back to 2006, the last time this matter was considered by DRB. I am checking with administrative staff whether or not BCDC has audio recordings of the DRB and Commission meetings concerning Westpoint Harbor. If audio recordings exist, we will provide those audio recordings for inspection and copying, if it is feasible to do so (any recordings from 2003 or 2006 may be on cassette tape).
8. We will provide copies of the photos taken by Adrienne Klein during a site visit on May 19, 2010.
9. The email dated February 23, 2017 (2:47 pm) from me to multiple BCDC staff, and Andrea Gaffney's email reply of the same date (3:51 pm), are privileged as both attorney-work product and attorney-client communications, and were inadvertently disclosed. These emails concern the status of Mr. Sanders' compliance with certain permit requirements and were prepared in the context of evaluating legal issues associated with permit noncompliance and preparation of the Violation Report / Complaint. We will not provide copies of these inadvertently disclosed privileged email. We request that Kevin destroy any notes he has of the contents of these inadvertently disclosed, privileged emails.
10. Greg Ogata believes that he requested copies of the dock plans that Kevin tagged. However, we will provide another copy of the dock plans to you. Greg was unable to locate a "received-date-stamped copy of a March 3, 2007, letter from Mr. Sanders to Brad McCrea" in the folder with the dock plans or in the chronological file. If Kevin can provide any additional information that would help us to locate such a letter, we will look for it again.
11. Greg believes that he inadvertently missed seeing that Kevin had tagged this document for copying. We will provide this document to you as requested.
12. We will provide copies of all attachments to the August 7, 2017 email from Keren Dill.

13. We will provide both attachments to my June 27, 2017 email to Jared Underwood.
14. We will provide the four attachments referenced in Brian Gaffney's emails dated July 10, 2017.
15. We will provide the attachments to Gail Rabe's emails dated June 19 and June 23, 2017.
16. Jared Underwood did not send an email to BCDC following up on his July 13, 2017 email.
17. We have been unable to locate a previous email from Melissa Frago, prior to her May 10, 2012 email to Ms. Klein.
18. We will provide copies of the site photos taken by Andrea Gaffney on December 8, 2016 and April 17, 2017.
19. I had not been aware that Andrea Gaffney has former Bay Design Analyst Ellen Miramontes' electronic file for Westpoint Marina in her – Andrea's – staff folder. I will review Ellen's file within the next few days and we will produce all documents in that file that are not privileged or otherwise exempt from disclosure (if any).

Greg has already begun assembling the additional documents that we will produce, as discussed herein. He should have all of them available for uploading to a dropbox by tomorrow afternoon or first thing Thursday.

This is to acknowledge that I have not responded to all of the issues raised in your September 7th letter. However, I wanted to provide this initial response promptly and to let you know that we will be producing additional documents within the next couple of days. I will respond to the remaining issues you raised as soon as possible, by this Friday or no later than early next week.

Please contact me if you have questions.

Sincerely,



MARC ZEPPELLO
Chief Counsel

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